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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

OPEN MEETING ITEM



RECEIVED EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

2001 AUG 10 P 3:21

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: AUGUST 10, 2001

DOCKET NO: T-03985A-01-0086

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Order on:

TELMEX USA, L.L.C.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 20, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 28, 2001 AND AUGUST 29, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

AUG 10 2001

DOCKETED BY	
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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
7 TELMEX USA, L.L.C. FOR A CERTIFICATE OF  
8 CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES, EXCEPT  
LOCAL EXCHANGE SERVICES

DOCKET NO. T-03985A-01-0086

DECISION NO. \_\_\_\_\_

**ORDER**

9 Open Meeting  
10 August 28 and 29, 2001  
Phoenix, Arizona

11 **BY THE COMMISSION:**

12 Having considered the entire record herein and being fully advised in the premises, the  
13 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. On January 29, 2001, Telmex USA, L.L.C. ("Applicant" or "Telmex") filed with the  
16 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide  
17 competitive resold interexchange telecommunications services within the State of Arizona.

18 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
19 telecommunications providers ("resellers") were public service corporations subject to the  
20 jurisdiction of the Commission.

21 3. Applicant is a Delaware corporation, authorized to do business in Arizona since 1997.

22 4. Applicant is a switchless reseller, which purchases telecommunications services from  
23 a variety of carriers.

24 5. On April 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff  
25 Report in this matter. In its Staff Report, Staff stated that Telmex USA, L.L.C. provided financial  
26 statements for the year ended December 31, 2000. These financial statements list assets of \$16.5  
27 million, total equity of \$5.2 million, and a net income of \$2.8 million. Based on the foregoing, Staff  
28

1 believes that Telmex has sufficient financial resources to be allowed to charge customers any  
2 prepayments, advances, or deposits without posting a performance bond to cover such customer  
3 prepayments, advances, or deposits. Staff recommended approval of the application subject to the  
4 following conditions, that:

5 (a) The Applicant shall comply with all Commission rules, orders, and other  
6 requirements relevant to the provision of intrastate telecommunications service;

7 (b) The Applicant shall maintain its accounts and records as required by the  
8 Commission;

9 (c) The Applicant shall file with the Commission all financial and other reports  
10 that the Commission may require, and in a form and at such times as the Commission  
may designate;

11 (d) The Applicant shall maintain on file with the Commission all current tariffs  
12 and rates, and any service standards that the Commission may require;

13 (e) The Applicant shall comply with the Commission's rules and modify its tariffs  
14 to conform to these rules if it is determined that there is a conflict between the  
Applicant's tariffs and the Commission's rules;

15 (f) The Applicant shall cooperate with Commission investigations of customers  
16 complaints;

17 (g) The Applicant shall participate in and contribute to a universal service fund, as  
18 required by the Commission;

19 (h) The Applicant shall notify the Commission immediately upon changes to the  
Applicant's address or telephone number;

20 (i) The Applicant's intrastate interexchange service offerings should be classified  
21 as competitive pursuant to A.A.C. R14-2-1108;

22 (j) The rates proposed by the Applicant in its most recently filed tariffs should be  
23 approved on an interim basis. The maximum rates for these services should be the  
24 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
for the Applicant's competitive services should be the Applicant's total service long  
run incremental costs of providing those services;

25 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
26 competitive service, the rate stated should be the effective (actual) price to be charged  
27 for the service as well as the service's maximum rate, and;

28 (l) The Applicant shall certify that all notification requirements have been

completed.

6. Staff also recommended approval of Telmex USA, L.L.C.'s application subject to the following conditions:

- (a) That the Applicant file conforming tariffs within 30 days of an Order in this matter, and in accordance with the Decision;
- (b) That the Applicant file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:
  1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by Telmex USA, L.L.C. following certification, adjusted to reflect the maximum rates that the Applicant has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.
  2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification.
  3. The value of all assets, listed by major category, including a description of the assets, used for the first twelve months of telecommunications services provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
- (c) Telmex USA, L.L.C.'s failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate of Convenience and Necessity and of the tariffs.

7. The Staff Report also stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

8. On April 23, 2001, a Procedural Order was issued requiring exceptions to the Staff Report or a request that a hearing be set, to be filed by July 11, 2001. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set. This Procedural Order also granted intervention to Qwest Corporation.

9. On May 18, 2001, Telmex filed Affidavits of Publication indicating compliance with

1 the Commission's notice requirements.

2 10. On August 29, 2000, the Arizona Court issued its Opinion in US WEST  
3 Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the  
4 Arizona Constitution requires the Commission to determine fair value rate bases for all public service  
5 corporations in Arizona prior to setting their rates and charges."

6 11. On October 26, 2000, the Commission filed a Petition for Review to the Supreme  
7 Court.

8 12. On February 13, 2001, the Commission's Petition was granted.

### 9 CONCLUSIONS OF LAW

10 1. Applicant is a public service corporation within the meaning of Article XV of the  
11 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12 2. The Commission has jurisdiction over Applicant and the subject matter of the  
13 application.

14 3. Notice of the application was given in accordance with the law.

15 4. Applicant's provision of resold interexchange telecommunications services is in the  
16 public interest.

17 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive  
18 resold interexchange telecommunications services in Arizona.

19 6. Staff's recommendations in Findings of Fact No. 5 and 6 are reasonable and should be  
20 adopted.

### 21 ORDER

22 IT IS THEREFORE ORDERED that the application of Telmex USA, L.L.C. for a Certificate  
23 of Convenience and Necessity for authority to provide competitive resold interexchange  
24 telecommunications services, except local exchange services, is hereby granted, as conditioned  
25 herein.

26 IT IS FURTHER ORDERED that Telmex USA, L.L.C. shall comply with Staff's  
27 recommendations as set forth in Findings of Fact Nos. 5 and 6.

28 ...

1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,  
2 Telmex USA, L.L.C. shall notify the Compliance Section of the Arizona Corporation Commission of  
3 the date that it will begin or has begun providing service to Arizona customers.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8 CHAIRMAN

COMMISSIONER

COMMISSIONER  
9  
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11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Secretary of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this \_\_\_\_ day of \_\_\_\_\_, 2001.

16  
17 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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DISSENT \_\_\_\_\_  
SG:dp

1 SERVICE LIST FOR:

TELMEX USA, L.L.C.

2 DOCKET NO.:

T-03852A-00-1066

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